IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

NO. ___

HORACE LINDSEY,

Petitioner,

v.

EDMUND KELLY, Superintendent of the Chicago Park District, RICK HALPRIN, Chief Counsel of the Chicago Park District, JANE BYRNE, (former) Mayor of the City of Chicago, WILLIAM LEE, SYDNEY MAROVITZ, IOLA McGOWAN, JOHN McHUGH, and WILLIAM BARTHOLOMAY, Commissioners of the Chicago Park District,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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Chicago, IL 60605
(312) 294-4520

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EDMUND KELLY, Superintendent of the Chicago Park District, RICK HALPRIN, Chief Counsel of the Chicago Park District, JANE BYRNE, (former) Mayor of the City of Chicago, WILLIAM LEE, SIDNEY MAROVITZ, IOLA McGOWAN, JOHN McHUGH, and WILLIAM BARTHOLOMAY, Commissioners of the Chicago Park District,

Respondents.

QUESTION PRESENTED FOR REVIEW

Whether Petitioner's complaint was properly dismissed where Petitioner's statutory term of office legally expired and he was not reappointed and where the District Court correctly found, and the Court

of Appeals affirmed, that the Petitioner's position was exempt under the Shakman decree where the position in question was confidential and policy-making in nature.

PARTIES

In the first instance, the case below was filed as a Rule to Show Cause in the case of Shakman v. Democratic Organization of Cook County, et al., 69 C 2145 (Northern District of Illinois). The parties both below and here are Horace Lindsey, the previous Superintendent of Employment for the Chicago Park District as Petitioner, and Edmund Kelly, the Superintendent of the Chicago Park District, Rick Halprin, as Chief Counsel of the Chicago Park District, Jane Byrne, as the then Mayor of the City of Chicago and the Commissioners of the Chicago Park District, William Lee, Sidney Marovitz, Iola McGowan, John McHugh and William Bartholomay.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The Opinion of the Trial Court in dismissing the original Petition is not recorded and is appended as Appendix 3. The Opinion of the United States Court of Appeals for the Seventh Circuit originally was an unpublished Order pursuant to Circuit Rule 35. (Appendix 2) However, the Seventh Circuit entered an Order on 9 August, 1983 publishing the opinion. (Appendix 1) It is not yet reported or officially published.

JURISDICTION

The jurisdictional requisites *pro forma* have been set forth in the petition. However, as the facts and argument set forth below clearly establish, Petitioner fails to demonstrate the jurisdictional prerequisites of 28 U.S.C. 1254 (1), and Petitioner further fails to raise a new question or conflict of law among the Federal Courts of Appeals or with this Court and therefore is

not entitled to invoke the Court to exercise its sound discretion to grant the Petition For A Writ Of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 1:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.:

United States Constitution, Amendment 14:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; no shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ill. Rev. Stat., Ch. 24½, Section 79 (1981):

> "In any park district to which this Act is or shall become applicable, there is hereby created and established a civil service board, hereinafter called the board, to consist of three persons to be selected in the manner following:
>
> The governing authority or body of such park district, hereinafter called the park commissioners, shall within thirty

days after this Act becomes applicable, and thereafter whenever a vacancy occurs, appoint a superintendent of employment, for a term of six years from the date of his appointment and until his successor is duly appointed and qualified, which said superintendent of employment shall be under the direction and supervision of the park commissioners, and two park commissioners or members of such governing authority, each for a term of two years from the date of his appointment and until his successor is duly appointed and qualified, who shall constitute and be known as the civil service board of such park district. The superintendent of employment shall be paid a salary of not less than twenty-four hundred dollars a year, and shall devote his entire and exclusive time and attention to the duties pertaining to the office of superintendent and not engage in any other employment. The park commissioners may fix the salary of each of the other members of the civil service board at such sum, not to exceed five hundred dollars a year, as they may deem proper. Two members of the board shall constitute a quorum.

No member of the civil service board shall be removed except for palpable incompetence, or malfeasance in office upon written charges filed by or at the direction of the park commissioners and heard before the park commissioners upon 10 days written notice to the member.

The commission shall hear and determine the charges and its findings shall be

final and if such charges shall be sustained, the member of the civil service board so charged, shall be forthwith removed from office. A final decision of the commission shall be subject to review by the circuit court pursuant to "Administrative Review Act"*. If no appeal is taken from a final decision sustaining the charges, or if such a final decision is upheld on review, the park commission shall proceed within 30 days to fill the vacancy created by such removal.

* Chapter 110, Para. 264 et seq.

STATEMENT OF THE CASE

FACTS

Petitioner Lindsey has been an employee of the Chicago Park District since 1967. Since June 8, 1976, he has been the Superintendent of Employment for the Park District. From June 8, 1976 to January 11, 1977, he was Acting Superintendent. On the latter date he began serving a six year term as Superintendent. That term expired in January, 1983.

In September, 1982, Petitioner was appointed to serve another term as Superintendent of Employment. This appointment, however, was revoked shortly thereafter based on the assertions of the General Counsel for the Park District, Mr. Halprin, that the Park Commissioners were without authority to grant the Petitioner an extension of his contract until his original term expired in January, 1983. If left standing,

the second term was to have run until September, 1988.

Petitioner alleges that the failure of the Park District to renew his employment was due to political reasons and thus barred under the Shakman decree. Petitioner made substantial campaign contributions to his long-time friend, Richard M. Daley, a candidate for the Mayoralty of the City of Chicago and an opponent of Mayor Jane Byrne, a Respondent herein. In addition, in his capacity as Precinct Captain of the 47th Ward Organization, Petitioner asked other Precinct Captains to join with him in his support of candidate Daley.

Respondents argue that, because of the highranking and sensitive nature of Petitioner's position as Employment Supervisor, the position is exempt from the constraints of the Shakman decree.

The Superintendent of Employment is, pursuant to Ill. Rev. Stat., Ch. 24½, Para. 79, Sec. 2 (1981), appointed by the Commissioners of the Chicago Park District to serve a six year term and shall serve after the expiration of such six year period until a successor is appointed. The Superintendent of Employment of the Chicago Park District is under the supervision of the Park District Commissioners and is charged, along with the Superintendent of the District, with appointing and hiring personnel for the Park District. In addition, the Superintendent is required to serve on a Civil Service Board in which capacity he is a voting member and deals with numerous policy and other matters concerning Park District employment.

The Respondents especially take exception to the allegation in the original complaint referred to by Petitioner in his statement

of facts that Petitioner was terminated for political reasons. Respondents insist that there never was a termination of Petitioner as Superintendent of Employment for the Chicago Park District, but that Petitioner was merely not reappointed in January 1983 when his lawful term of office expired.

Additionally, the Petitioner is clearly erroneous when he states at page 9 in his Petition that the majority of the Respondents are accomplished lawyers. In truth, only Mr. Halprin and Mr. Marovitz are members of the Illinois Bar.

ARGUMENT

PETITIONER'S COMPLAINT WAS PROPERLY DISMISSED WHERE PETITIONER'S STATUTORY TERM OF OFFICE LEGALLY EXPIRED AND HE WAS NOT REAPPOINTED AND WHERE THE DISTRICT COURT CORRECTLY FOUND, AND THE COURT OF APPEALS AFFIRMED, THAT THE PETITIONER'S POSITION WAS EXEMPT UNDER THE SHAKMAN DOCTRINE WHERE THE POSITION IN QUESTION WAS CONFIDENTIAL AND POLICY-MAKING IN NATURE

The Petition must be denied. There is a total absence of merit to Petitioner's

spurious claim that the standards of review applied by the courts below are irreconcilably in conflict with the Court under the facts of this case. Furthermore, the Petitioner relies almost exclusively on the bold and speculative proposition that the General Assembly of the State of Illinois primarily intended, without stating so anywhere, to protect the position of the Superintendent of Employment for the Chicago Park District "from partisan political goals, as best it could". This proposition of law, for which Petitioner cites no supporting case or authority, is baseless, irrelevant or, at best, specious, as applied to analysis of the actual facts before the Court.

In its analysis, the District Court specifically and primarily relied on Branti v. Finkel, 445 US 507, (1980), in evaluating and eventually rejecting Petitioner's

allegations of a violation of the Shakman decree by respondents. Yet the Petitioner now inconsistently contends that Branti, supra, is the primary, if not sole, authority that supports his tenuous contentions that the lower courts used the wrong standard of review in dismissing his cause of action.

As the District Court reasoned:

> "The Court must thus decide whether the position of Superintendent is such that party affiliation is an appropriate requirement of the effective performance of the office. The Court must consider not only whether the position under consideration is the type of position which involves policymaking and requires confidentiality, but also where the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved. Branti v. Finkel, 445 US 507, 518 (1980)."

The District Court then at length stated its findings and applied the Shakman doctrine accordingly:

"From the memoranda on file, it is apparent that the Superintendent of Employment is a highranking policymaker whose position requires a large degree of confidentiality. He is a highranking bureaucrat within the Park District who is responsible only to the Park Commissioners and whose actions are subject to memoranda distributed for public scrutiny. As previously noted, along with the Superintendent, he is responsible for the formulation of hiring and other employment policies for the Park District. As a member of the Civil Service Board, he is responsible for the formulation and administration of the Civil Service examinations for Park District employees. Interestingly, he is one of only eight Park District employees specifically exempted from Civil Service and is himself charged with the implementation of the Shakman decree. Finally, petitioner is directly in charge of 79 subordinates including the 13 other individuals charged with making decisions related to hiring for the Park District.

It is the considered opinion of this Court that the position of Superintendent of Employment is of the very type that must be exempted from the constraints of the Shakman decree."

Lastly, the District Court examined Petitioner's claim that state law,

specifically Ill. Rev. Stat. Ch. 24½, Sec. 79, (1981), clearly entitled Petitioner to reappointment as Superintendent of Employment, regardless of any and all political and personal affinities and affiliations. This proposition is supported, in Petitioner's view, by virtue of the fact that the term of office is statutorily set at six years and that the statute further states the manner of appointment as well as the grounds for removal. It must be noted that nowhere in the record does Petitioner state that he did not serve out his original term of office of six years without the full privileges, compensation and benefits appropriate to that office.

The Court of Appeals, in affirming the District Court's dismissal of Petitioner's Cause of Action, cited a clear and consistent line of case authority up holding the decision of the lower court. This line of

decisions from the Court and from the 7th Circuit Court of Appeals Petitioner would chose either to ignore or gloss over as inconsistent and unduly conflicting.

In upholding Respondents' position, the Court of Appeals first looked to the test of Nekolny v. Painter, 653 F 2d 1164, (7th Cir., 1981), which is "whether the position held by the individual authorizes either directly or indirectly meaningful input into government decision making or issues where there is room for principled disagreement on goals or their implementation." Id, at 1120. Citing Illinois State Employee's Union v. Lewis, 473 F 2d 561, 594 (7th Cir., 1972), cert. denied, 410 US 928 (1973), and Elrod v. Burns, 427 US 347, 367-68 (1976), the Court of Appeals noted at page 4 of their opinion that "Lindsey concedes that if this is the correct test, the position of Park

Superintendent of Employment is exempt from the Shakman doctrine."

The Petitioner indeed concedes this very point in his Petition For A Writ Of Certiorari, but choses instead to rely on the following three bold and novel propositions:

1. Branti and Branti alone is applicable in the analysis of Petitioner's cause of action;

2. Branti is irreconcilable with and contrary to the aforementioned formulations of Elrod, Nekolny, and Lewis in interpreting the Shakman doctrine; and

3. Petitioner makes a clear compelling and sufficient showing under the Branti test solely because of Petitioner's dubious reasoning that "..the Illinois statutory scheme precluded party affiliation as an appropriate requirement to the effective performance of his public office." (Headnote from argument of Petition For Writ Of Certiorari, page 8).

On these three propositions does the Petition rest. Nowhere, however, in his Petition, does Petitioner cite actual language from Branti or from any other state or federal decision that would adequately

prop up his overreaching arguments and jumps of law and logic so as to justify redefining the subtle limits and nuances reflected in Branti. In truth, Petitioner cites Branti v. Finkel, supra, but once in the body of his argument. But the Court of Appeals, with some deliberation, considered Petitioner's interpretation of Branti and stated (at pages 11-12, Petition For Writ of Certiorari):

> "The argument has a superficial appeal and may reveal the wisdom of Justice Powell's admonition in Elrod that formulating standards for some patronage positions may be difficult, 427 US at 77, n.1 (Powell, J., dissenting). The argument, however, obscures the purpose of the policy-making exemption. This is to insure that the First Amendment's protection not interfere with the workings of democratic governments and the ability of duly elected officials to implement their policies."

Thereby, the Court of Appeals for the Seventh Circuit disposed of the Petitioner's argument saying (at page 5 of the opinion):

> "Whatever the meaning of the Illinois statute at issue here, Lindsey offers no reason why the statute should operate as more than one fact in that calculus. Here it is the only fact opposing application of the policymaker exemption, and it is far outweighed by every other aspect of the position." (emphasis added)

In summary, the Petition For a Writ Of Certiorari should be denied because Petitioner's complaint was properly dismissed where Petitioner's statutory term of office legally expired and he was not reappointed and where the District Court correctly found, and the Court of Appeals affirmed, that the Petitioner's position was exempt under the Shakman doctrine where the position in question was confidential and policy-making in nature.

CONCLUSION

The respondents respectfully request that the Petition For A Writ Of Certiorari be denied.

Respectfully, submitted,

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APPENDICES

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

August 9, 1983

Before
Hon. Richard D. Cudahy, Circuit Judge

MICHAEL SHAKMAN, et al.,	)Appeal from
	)the United
Plaintiffs,	)States Dis-
	)trict Court
v.	)for the
	)Northern
THE DEMOCRATIC ORGANIZATION	)District of
OF COOK COUNTY, et al.,	)Illinois,
	)Eastern Di-
Defendants-Appellees.	)vision.
	)
APPEAL OF: HORACE LINDSEY	)No. 69 C 2145
	)Judge Nicholas
No. 82 3079	) Bua

On consideration of the "MOTION TO PUBLISH OPINION" filed herein on July 15, 1983, by counsel for the City of Chicago,

IT IS ORDERED that said motion is hereby GRANTED, and this Court's unpublished order of July 5, 1983, shall be issued as a fully citeable opinion.

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Argued April 18, 1983

Unpublished Order
Not To Be Cited Per
Circuit Rule 35

Before:
Hon. Richard D. Cudahy, Circuit Judge

Hon. Jesse E. Eschbach, Circuit Judge

Hon. Luther M. Swygert, Senior Circuit Judge

MICHAEL SHAKMAN, et al.,	)
	)
Plaintiffs,	)Appeal from
and	)the United
	)States Dis-
HORACE LINDSEY,	)trict Court
	)for the Nor-
Petitioner-Appellant,	)thern Dis-
v.	)trict of Illi-
	)nois, Eastern
DEMOCRATIC ORGANIZATION	)division.
OF COOK COUNTY, et. al.,	)
	)
Defendants,	)No. 60 C 2145
and	)Nicholas J. Bua,
	)Judge
EDMUND L. KELLY, et al.,	)
	)
Respondents-Appellees.	)
	)
No. 82-3079	)

ORDER

This appeal concerns the scope of the Shakman decree with respect to high ranking policymaking public employees. Specifically, the question presented is whether the Superintendent of Employment for the Chicago Park District is a policymaker or confidential employee such that he is excluded from the First Amendment's protection from harassment for his political views. We affirm the District Court's judgement that the position of Park Superintendent of Employment is exempt from the Shakman decree.

I

The facts are undisputed. The Chicago Park District ("Park") is governed by the Chicago Park Commission ("Commission") which is comprised of five commissioners who are appointed by the Mayor of Chicago to serve staggered five year terms. Ill. Rev. Stat.,

Ch. 105, Para. 333.3 (1979 & Supp. 1982-83). These commissioners are authorized to appoint a superintendent of employment for a six year term to serve under their direction and supervision. Id., Ch. 24½, Sec. 79. The Superintendent of Employment is one of eight Park employees, including the commissioners themselves, who are exempt from the Illinois Civil Service Code. Id., Ch. 24½, Sec. 90. The Superintendent of Employment and two Park Commissioners are members of the Park's Civil Service Board. Id., Sec. 79. As such, he may not be removed except for palpable incompetence or malfeasance in office, and his removal is subject to review by the Illinois courts. Id.

The Park Code defines the duties of the superintendent as:

> The superintendent of employment shall: (a) Be the head of the department of personnel and Civil Service and shall have the management and control of all matters pertaining hereto; (b) Be the personnel

> officer of the park district; and shall, under the supervision of the Board of Commissioners and the Civil Service Board, administer and enforce the Civil Service Board and shall exercise observation of all employees with regard to the adequate performance of their duties, their conformity to the rules, and to the requirements of their work, their leaves, their absences, and their efficiency records and any and all conditions and circumstances relating to their responsibilities; (c) Supervise the medical, safety, employees' activities and unemployment compensation division; (d) Enforce all of the law of the state and provisions of this Code in relation to matters pertaining to public health and sanitary conditions of the Chicago Park District; and (e) Supervise such other functions and responsibilities as may be assigned to this department by ordinance or by the direction of the civil service board or the board of commissioners.

Horace Lindsey, Park Superintendent of Employment from January, 1977 to January, 1983, was as he admits in his pleadings, a highranking bureaucrat who exercised various powers of management, control, enforcement, supervision and policy formulation. He supervised 79 employees and, along with the

Park General Superintendent, made all of the Park's hiring decision. He was responsible only to the commissioners and his acts were subject to public scrutiny. As a member of the Park's Civil Service Board, he was responsible for the formulation and administration of civil service examinations for Park employees. He was charged with implementation of the Shakman decree. Also, in answer to interrogatories prepared by Park counsel in consultation with Lindsey for an earlier Shakman proceeding, Lindsey sought exemption of his position from the Shakman decree on the basis of the position's policy-making and confidential nature.

Lindsey was appointed Park Superintendent of Employment in January, 1977 to serve until January, 1983. In September, 1982, the Commission renewed his contract to cover the period September, 1982 through September, 1988. Sometime later, Lindsey's support for

Richard M. Daley for Mayor of Chicago in the upcoming Chicago Democratic primary became generally known. In November, 1982, the Commission rescinded Lindsey's second contract on the grounds that the Commission lacked authority to enter into the contract.

Alleging that the rescission was in reality a firing for the expression of his political beliefs in violation of a 1980 consent decree entered into by the Park in the principal case, Shakman v. Democratic Organization of Cook County, (No. 69 C 2145 N.D. Ill.), Lindsey sought a rule to show cause and a contempt finding against the Park and several commissioners.* Defendants filed a motion to dismiss and a "statement of

* Lindsey also sued Edward Vrdolyak and Mayor Byrne. The former defendant was voluntarily dismissed. Because of the disposition of this case, we do not discuss the allegations against Mayor Byrne.

facts" accompanied by assorted documents. Defendants argued that these documents combined with Lindsey's pleadings "conclusive[ly]" established, as a matter of law, that the position of Superintendent of Employment was exempt from the Shakman decree. Lindsey's response, accompanied by an affidavit, was that the Illinois State Legislature has "preempted" the decision whether the Park Superintendent of Employment was protected by the Shakman decree. Lindsey asked the court to deny the motion to dismiss and set the case for an immediate hearing.

The District Court granted defendants' motion to dismiss, observing:

> It is the considered opinion of this Court that the position of Superintendent of Employment is the very type that must be exempted from the constraints of the Shakman decree. Given the amount of discretion and authority enjoyed by the Superintendent of Employment and given the closeness with which the Superintendent of Employment works with the Park District Superintendent and other highranking officials of the

> District and the City of Chicago, it is clear that the utmost of confidentiality is required to effectively carry out the position.

On appeal Lindsey asks us to reverse the District Court, but it is unclear whether he seeks a hearing or believes we can or should reach the merits. He does not discuss the standard of review or what a hearing (before the District Court Judge as a factfinder) would accomplish. Defendants assert that the standard of review is clear error, citing Barnes v. St. Catherine's Hospital, 563 F 2d 324 (7th Cir., 1977), and Schwerman Trucking co. v. Gartland Trucking Co., 496 F 2d 466 (7th Cir. 1974).

II

We recently reviewed the policymaker exception to the First Amendment's protection of public employees. In Nekolny v. Painter, 653 F 2d 1164 (7th Cir., 1981), we articulated the test as "whether the position held by the individual authorizes, either directly or

indirectly, meaningful input into government decision making on issues where there is room for principled disagreement on goals or their implementation." Id. at 1170. This articulation is drawn from Illinois State Employees' Union v. Lewis, 473 F 2d 561, 574 (7th Cir., 1972), cert. denied, 410 US 928 (1973), and Elrod v. Burns, 427 US 347, 367-68 (1976) (plurality opinion of Brennan, J.).

Lindsey concedes that if this is the correct test, the position of Park Superintendent of Employment is exempt from the Shakman decree. As the Park's second highest employee and as a member of the Park's Civil Service Board there is no question that Lindsey is authorized to provide meaningful input into Park employment policies and goals. See Nekolny, supra. Because he works closely with the commissioners and other governments' high officials, considerations

of personal loyalty are appropriate. See Lewis, supra. Lindsey's responsibilities are not narrowly defined and are of a broad scope. See Elrod, supra. As a member of the Civil Service Board, he acts as more than an advisor because his vote directly affects Park employment policy. See Id. Indeed, we agree with the District Court that it is difficult to conceive of any exempt position if the Park Superintendent of Employment is not also exempt.

Lindsey, however, chooses to discount the Nekolny, Lewis, and Elrod formulations and, instead, focuses upon the Branti v. Finkel, 445 US 507, 518 (1980) test:

> (T)he ultimate inquiry is not whether the label "policymaker" or "confidential" fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.

According to Lindsey the Illinois Legislature, by providing that the Park

Superintendent of Employment can only be removed for incompetence or malfeasance, has determined that party affiliation is not an appropriate requirement for effective performance of the position. This determination, according to Lindsey, preempts our analysis of the policymaker exception.

The argument has a superficial appeal and may reveal the wisdom of Justice Powell's admonition in Elrod that formulating standards for some patronage practices may be difficult. 427 US at 77 n.1 (Powell, J., dissenting). The argument, however, obscures the purpose of the policymaker exemption. This is to ensure that the First Amendment's protection not interfere with the workings of democratic governments and the ability of duly elected officials to implement their policies. As we observed in Nekolny, "(a) narrow definition of who is a policymaker

necessarily increases the chances of 'undercut(ting)...the implementation of the policies of the new administration, policies presumably sanctioned by the electorate." Elrod, 427 US at 367. The ability of the government to implement the will of the people is fundamental to our system of representative democracy." 653 F 2d at 1169-70.

Of course, "the determination of status as a policymaker in many cases presents a difficult factual question." Nekolny, 653 F 2d at 1169 (citation omitted). Whatever the meaning of the Illinois statute at issue here, Lindsey offers no reason why the statutes should operate as more than one fact in that calculus. Here it is the only fact opposing application of the policymaker exemption, and it is far outweighed by every other aspect of the position. We agree with the District Court's assessment of the facts:

the position of Park Superintendent of Employment is exempt from the Shakman decree.

The judgement of the District Court is affirmed.

APPENDIX 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL SHAKMAN, et al.,	)
	)
Plaintiffs,	)
	)
v.	)No. 69 C 2145
	)
THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, et al.,	)Honorable)Nicholas Bua
	)
Defendants.	)
	)
IN RE: PETITION OF HORACE LINDSEY	)
	)

ORDER

Before the Court is the Motion of the Petitioner, Horace R. Lindsey, for a Rule to Show Cause under the Shakman decree. Also included is Petitioner's Motion for Leave to File, by way of a second count, a pendent claim brought under state law. The Defendants have moved to dismiss the Motions For the reasons stated herein, the Motion for a Rule to Show Cause is hereby dismissed.

FACTS

Petitioner Lindsey has been an employee of the Chicago Park District since 1967. Since June 8, 1976, he has been the Superintendent of Employment for the Park District. From June 8, 1976 to January 11, 1977, he was Acting Superintendent. On the latter date he began serving a six year term as Superintendent. That term will expire in January, 1983.

In September, 1982, Petitioner was appointed to serve another term as Superintendent of Employment. This appointment, however, was revoked shortly thereafter based on the assertions of the General Counsel for the Park District, Mr. Halprin, that the Park Commissioners were without authority to grant the Petitioner an extension of his contract until his original term expired in January, 1983. If left standing, the second term was to have run until September, 1988.

Petitioner alleges that the failure of the Park District to renew his employment was due to political reasons and thus barred under the Shakman decree. Petitioner made substantial campaign contributions to his long-time friend, Richard M. Daley, a candidate for the Mayoralty of the City of Chicago and an opponent of Mayor Jane Byrne, a Defendant herein. In addition, in his capacity as Precinct Captain of the 47th Ward Organization, Petitioner asked other Precinct Captains to join with him in his support of candidate Daley.

Defendants argue that, because of the highranking and sensitive nature of Petitioner's position as Employment Supervisor, the position is exempt from the constraints of the Shakman decree.

The Superintendent of Employment is, pursuant to Ill. Rev. Stat., Ch. 24½, Para. 79, Sec. 2 (1981), appointed by the

Commissioners of the Chicago Park District to serve a six year term and shall serve after the expiration of such six year period until a successor is appointed. The Superintendent of Employment of the Chicago Park District is under the supervision of the Park District Commissioners and is charged, along with the Superintendent of the District, with appointing and hiring personnel for the Park District. In addition, the Superintendent is required to serve on a Civil Service Board in which capacity he is a voting member and deals with numerous policy and other matters concerning Park District employment.

The single issue for consideration in the matter at bar is whether the Superintendent of Employment is a position which is exempt from the constraints of the Shakman decree. Specifically, it must be decided whether the alleged failure of the Commissioners to renew and continue the employment contract of the

Petitioner for alleged political activities constitutes a violation of the Shakman decree. The Court must thus decide whether the position of Superintendent is such that party affiliation is an appropriate requirement of the effective performance of the office. The Court must consider not only whether the position under consideration is the type of position which involves policy-making and requires confidentiality, but also whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved. Branti v. Finkel, 445 US 507, 518 (1980).

From the memoranda on file, it is apparent that the Superintendent of Employment is a highranking policymaker whose position requires a large degree of confidentiality. He is a high ranking bureaucrat within the Park District who is responsible only to the

Park Commissioners and whose actions are subject to memoranda distributed for public scrutiny. As previously noted, along with the Superintendent, he is responsible for the formulation of hiring and other employment policies for the Park District. As a member of the Civil Service Board, he is responsible for the formulation and administration of the Civil Service examinations for Park District employees. Interestingly, he is one of only eight Park District employees specifically exempted from Civil Service and is himself charged with the implementation of the Shakman decree. Finally, Petitioner is directly in charge of 79 subordinates including the 13 other individuals charged with making decisions related to hiring for the Park District.

It is the considered opinion of this Court that the position of Superintendent of Employment is of the very type that must be

exempted from the constraints of the Shakman decree. Given the amount of discretion and authority enjoyed by the Superintendent of Employment and given the closeness with which the Superintendent of Employment works with the Park District Superintendent and other highranking officials of the District and the City of Chicago, it is clear that the utmost of confidentiality is required to effectively carry out the position. As many of the decisions and much of the general work is of a highly sensitive nature, the Court finds that party affiliation and political support are appropriate requirements for the effective performance of the office. Branti v. Finkel, 445 US 507, 518 (1980). Were the Court to find otherwise, it would be difficult to perceive any position which would be exempted from the Shakman decree. This Court will not dispute that certain purely political appointments will always be

required to insure that government works effectively and efficiently. The Court therefore holds that the position of Superintendent of Parks for the Chicago Park District is such a position and is exempted from the constraints of the Shakman decree.

This ruling of the Court merely holds that no Shakman violation has occurred in the purported dismissal of the Petitioner from his employment. The Court makes no judgement as to whether the Commissioners of the Park District committed any violation of state law, specifically with regard to Ill, Rev. Stat., Ch. 24½, Para. 79, Sec. 2 (1981). The authority of the Commissioners to revoke an existing appointment or to prematurely reappoint an individual is strictly a matter of state law over which this Court has no pendent jurisdiction in the absence of a claim cognizable in federal court. As the Court is hereby dismissing the federal claim

herein brought pursuant to the Shakman decree, there being no remaining basis for federal jurisdiction, the Motion for Leave to File the Pendent State Claim must be denied. Gibbs v. United Mine Workers, 383 US 715, 726 (1966). The Motion of Horace Lindsey for a Rule to Show Cause pursuant to the Shakman decree is thus dismissed in its entirety.

IT IS SO ORDERED.

Nicholas J. Bua, Judge
United States District Court

DATED: December 16, 1982